IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 1116 OF 2000

IN

WRIT PETITION NO.3011 OF 1999

TOMCO KAMGAR UNIONI ... APPELLANT
(Org. Petitioner)

Vs.

M/S. HINDUSTAN LEVER LTD. .. RESPONDENTS
(Org. Respondents)

Mr. N.M.Ganguli for the appellant.
Mr. P.K.Rele i/b. Piyush Shah for Respondents.

CORAM: D.K.DESHMUKH &
J.H.BHATIA,JJ.
DATE : 13th August, 2007.

P.C.

1. By this Appeal, the appellant challenges the order passed by the learned Single Judge of this Court in Writ Petition No. 3011 of 1999 dated 4th October,2000. By that order, the learned Single Judge

rejected the Writ Petition filed by the appellant-Union. The appellant-Union had filed that Petition challenging the award dated 19th April,1999 made by the labour Court in Reference (IDA) No.732 of 1996. Before the Labour Court, the following demands were referred :-

> "(i) Restore full operation in accordance with the licensed capacity;
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> (ii) Provide employment fully to the staff and workmen employed at the Hay: Bunder Road, Sewri-factory;
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> (iii) Fill all vacancies in the departments of the factory; and
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> (iv) Implement and act in accordance with the directions given before the Court and implement its assurances given to the workmen and staff of the factory."

The Labour Court found that before the matter was referred under the Industrial Disputes Act to the Labour Court, the appellant-Union had filed a complaint before the Industrial Court claiming similar reliefs and, therefore, in view of the provisions of Section 59 of the Maharashtra Recognition of Trade Unions & Prevention

of Unfair Labour Practices Act, 1971 (for short, "MRTU & PULP Act"), Reference was not maintainable and, therefore, the Labour Court dismissed the Reference. It may be pointed out that the Labour Court in the Award had also observed that the issues raised in the Complaint and the issues raised in the Reference are similar and if there is any difference, the appellant can always amend the complaint and raise issues which may not have been raised there and are raised in the Reference. As the issues are substantially similar, the Reference was rejected. The learned Single Judge confirmed that order.

2. The learned Counsel appearing for the respondents pointed out to us that the establishment to which the reference related has been closed, the factory licence has been surrendered and, according to him, some of the employees have taken voluntary retirement and those who have not taken voluntary retirement, their services were terminated in accordance with law. The following paragraph from the affidavit filed on behalf of the respondents is relevant. It reads as under :-

> "3. The facts of the case are that the establishment at Hay Bunder Road, Sewree of the erstwhile Tata Oil Mills Company Limited (TOMCO) became an establishment of the Respondent

Company post merger of TOMCO with the Respondent Company with effect from 1st April, 1993. At the relevant time 1054 workmen were working in the erstwhile TOMCO. Between 1993 to 1994 reports of the Factory Inspector were received stating that the factory could not carry on production and directions were issued to the establishment to stop all manufacturing activities. The establishment was lying idle without any productive work and the workmen were drawing idle wages for the said period. Between April 1993 and mid 1996, 366 workmen availed of VRS. On 24th October, 1996 a settlement was entered into with the majority Union the Tata Oil Mills & Allied Companies Employees Union regarding Voluntary Retirement Scheme and 537 workmen opted for the Voluntary Separation Package. On 2nd June, 2003 the factory licence was surrendered. On 10th December, 2003 the Respondent Company wrote to the Directorate of Industrial Safety and Health informing it about the deletion of the registration of the said establishment under the Factories Act. On 31st March, 2004 the establishment was registered under The Shops and Establishments Act, 1948. On 8th October, 2004 the Respondent Company gave a closure notice under section 25-FFA of The

> Industrial Disputes Act 1947 (hereinafter referred to as "the Central Act"). Hereto annexed and marked Exhibit I is a copy of the said notice. I say that pursuant to the said notice the Respondent Company closed its TOMCO establishment at Hay Bunder Road, Sewree and terminated the services of 85 workmen who were then on the rolls of the establishment after paying them compensation and legal dues as required by law. I say that with effect from 8th October, 2004 the establishment being closed, the demands raised by the Appellant Union which can only be relevant to an operating establishment are infructuous and are in any event not capable of being adjudicated."

The learned Counsel for the respondents also pointed out that the issue of closer has also been referred to the Labour Court and references are registered as Reference (IDA) Nos.56 of 2005, 57 of 2005 and 60 of 2005 which are pending. The learned Counsel pointed out that the complaint filed under the MRTU & PULP Act, referred to above, is also pending before the Industrial Court. The learned Counsel submitted that in view of the closure of establishment, if the closure continues, none of the matters which have been referred, can be decided at this juncture.

3. We have also heard learned Counsel appearing for the appellant. According to him, though it is true that the establishment has been closed, the question of validity or otherwise of the closure is subjudice. In his submission, therefore, merely because there is a closure, it will not be appropriate to dispose of the Appeal.

4. We have gone through the record. Before us there is no dispute on the following facts. That before reference was made to the Labour Court, the appellant-Union had filed the complaint under the MRTU & PULP Act claiming reliefs in relation to the establishment. Section 59 of the MRTU & PULP Act in clear terms lays down that if any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act. The Labour Court has found that the dispute raised in the complaint filed under the MRTU & PULP Act is substantially the same. The Labour Court has also observed that if there is any demand which has been raised in the reference, but has not been raised in the complaint under the MRTP & PULP Act, the Union can amend its complaint and include that demand also. In our opinion, in this view of the

matter, therefore, it cannot be said that there is any illegality in the order of the Labour Court or the order passed by this Court in the Writ Petition, specially because now the establishment is, admittedly, closed.

5. In this view of the matter, in our opinion, the following order would meet the ends of justice :-

> The Appeal is disposed of. However, it is made clear that in case in the references which are pending in relation to the closure, it is held that the closure is invalid, the appellant would be entitled to make an application for amendment of the complaint to include all the demands which might not have been raised in the complaint, but have been raised in the industrial dispute which was decided by the award which is impugned in this Appeal.
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> Appeal is disposed of.

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(D.K.DESHMUKH,J.)

(J.H.BHATIA,J.)